

CALIFORNIA PUBLIC UTILITIES COMMISSION
Water Division
Water Advisory Branch

APPLYING FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY
FOR A WATER OR SEWER SYSTEM COMPANY

Standard Practice U-10-W

October 2003

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Staff Notes on a Water Certificate Application

1. The attached information is intended as an aid in the preparation of a formal application for a certificate of public convenience and necessity to construct a sewer system¹, a water system or a noncontiguous extension of an existing system. It is designed to assist an applicant in preparing a complete application and in complying with statutory requirements; also, to enable the Commission's staff to expedite its investigation and if possible to recommend ex parte procedure.

Purpose

2. The purpose of this is to provide a guide in processing an application for a certificate of public convenience and necessity (certificate) to construct a water system, a sewer system or a noncontiguous extension of a system. It is written primarily for the staff member who has not processed a certificate application before. At the same time it can serve as a review for the more experienced staff who are only occasionally assigned a certification matter. You will undoubtedly have a number of questions. Don't hesitate to ask your supervisor for assistance.

Inquiries

3. Particular material has been prepared for responding to an inquiry concerning a certificate and in the analysis of an application. The material has been attached to these procedures and includes:
 - a. Staff Notes on a Water Certificate Application.
 - b. Outline Guide for a Water Certificate Application.
 - c. Water Supply Questionnaire for Other than Publicly Owned or Mutual Utility.
 - d. Excerpts from the Public Utilities Code.
 - e. Excerpts from the Rules of Practice and Procedure.
 - f. Staff Notes on a Sewer System Certificate Applications.
 - g. Check list.... Certificate Applications of Water Utilities.
4. In communication with the potential applicant, you should encourage submittal of the application of the Hydraulic Branch in draft for review before the formal filing. Experience has proven that early informal review or what is proposed for formal filing can save considerable time and effort.
5. An application must comply with the Commission's Rules of Procedure, particularly those rules shown in Articles 2, 4, 5, 8, and 23. The design and construction of water system must comply with the requirements of the Commission's General Order No. 103, Rules Governing Water Service

¹ Chapter 1109 of the Statutes of 1970 amended the Public Utilities Code such that sewer system corporations would be subject to Commission regulation, effective July 1, 1971.

Including Minimum Standards for Design and Construction. The filing fee is \$75.

6. With respect to the mechanics of the preparation of an application:

Paper size: The size of this guide, 8 ½ x 11 inches, is suggested.

Use only one side of the paper.

Double space all text material. Single space tabulated data.

PUC requires an original and seven conformed copies.

For convenience in handling, maps should not exceed a rectangular size of about 30 x 40 inches and must be folded to the size of the application.

6. Applicants are advised that it is Commission policy to certificate only that portion of a real estate development wherein sewer or water distribution facilities are to be constructed initially as opposed to the whole area a subdivider may own or control. The Commission ordinarily certificates only that portion of a subdivision wherein facilities have been planned in detail and the construction scheduled to go forward as soon as the certificate decision has been issued.
7. The Commission favors one large utility as opposed to two smaller utilities, other things being equal; therefore, if there is an established utility within the immediate area of a real estate development, the subdivider should explore the possibility of the existing utility providing the intract distribution mains and any special facilities needed to serve the development under its filed main extension rule. The Commission does not certificate a subdivider to establish a new utility merely because the subdivider owns or controls the land to be served. In fact, Resolution No. M-4708, August 28, 1979 says the Commission will for a small (leas than 500 service connection) water company:
 - a. Deny certificates of operations which are likely to be unviable or marginally viable or provide inadequate service, whether or not an existing entity can provide service to the subject area;
 - b. Deny certificates for a potentially viable system if another entity, such as a public utility or public district, is able to serve the proposed area;
 - c. Cancel unexercised certificates for operations unlikely to be viable systems if developed; likewise cancel certificates for constructed systems serving no customers when the owner requests a transfer and sale of the utility which would not be likely to result in a viable operation;
 - d. Support and promote the conversion of unviable or marginal water utilities to public ownership or their mergers with more viable

entities when opportunities arise and customer service is more likely to improve through such change than without it

- e. Grant certificates for proposed water system only when (1) need for the utility is demonstrated by applicant showing that no other entity is willing and able to serve the development and concrete present and/or future customer demand exists and (2) viability is demonstrated, ordinarily through the following tests:
 - i. Proposed revenues would be generated at a rate level not greatly exceedg that set for comparable service by other water purveyors in the general area;
 - ii. That utility would be self-sufficient, i.e. expenses would be supported without their being allocated between the proposed utility and other businesses;
 - iii. The applicant would have a reasonable opportunity to derive a fair return on its investment, comparable to what other water utilities are currently being granted.
8. With respect to the type of business organization to be set up, applicants should be advised that under the Commission's regulatory jurisdiction, staff members must have access to all books and records of a public utility and a public corporation must obtain Commission authority to issue its stock even if the corporation is engaged in business activities not related to the water public utility. For these reasons, the staff suggests that applicants explore the feasibility of establishing the utility as an entity separate from any other business activity.
9. As an aid in preparing an application for a certificate, the Commission's Water Division will review a draft copy of a proposed application before the filing is made. In this manner, the staff can make comments on the contents of the proposed application that may indicate the need for any additional data to be shown or the elimination of any unnecessary information. Personnel are available for this consultation at the Commission's headquarters, 505 Van Ness Avenue, San Francisco, California, 94102, (415) 703-1739 or water_division@cpuc.ca.gov.
7. Pertinent Articles from the Commission's Rules of Practice and Procedures are included in an attachment titled OII 22, Appendix B, Information and Criteria List. This material contains considerable emphasis on environmental impact assessment. It should be noted that this requirement relates to the Commission's certification of utility projects where the Commission is required to issue an environmental impact report. When an environmental impact assessment of a development that includes the water system for which certification is being requested has been made by another entity (in most situations the respective county), and this

assessment includes analysis of the water-related aspects of the project, additional environmental impact assessment by the Commission is not required. An application should include a copy of any environmental impact assessment that has been made or at least the water-related portions of the assessment.

8. Rules of Practice and Procedure 2, 3, 4, 5, 6, 7, 15, 16, and 17 set forth the standard requirements of a formal application to the Commission. When an application is received in the Docket Office conformance with these requirements is checked. If found to fulfill these requirements the application is “docketed”.
9. The Government Code, Sec. 65920 through 65957, sets forth certain requirements that agencies of the State must follow in their permitting responsibilities. These certificate procedures must conform with those requirements. In brief and as related to certificates for water or sewer systems, we have 30 days from the filing of an application to notify the applicant of any technical deficiencies in the filing and also that, although the application has been accepted for filing, it is incomplete. At the same time the applicant must be notified specifically regarding what must be provided to make the filing complete. Upon receipt of the additional material, a new 30-day review period begins. These technical deficiencies must be corrected before the application is determined to be complete. If not required at that time the information cannot be requested later. This does not preclude a later request to supplement information previously provided. An example would be work papers to support an expense item.
10. The same application, “Outline Guide for a Water Certificate Application”, should be used in reviewing an application for completeness. The “Check List of Information To Be Obtained In Connection With Certificate Applications Of Water Utilities” can also be used.

Advice of Participation

11. At about this point the Advice of Participation should be prepared. The scope of the project should be definable and any issues apparent. If it appears that participation by other staff (legal, economics, etc.) will be required, a meeting with these possible participants will be arranged by your section supervisor or the Branch Chief to further clarify the issues and scope the course of action. Keep your supervisor informed. When issues or potential issue come up, bring them to his/her attention.
12. As the format of the Advice of Participation indicates, it is a formal means of informing the other staff organizations regarding what we plan to do in carrying out our responsibilities concerning a particular application. For the more complex and lengthy proceedings, a work schedule should be attached.
13. The Commission does not necessarily hold a hearing on an application for a water or sewer system certificate, but may issue its decision on an ex

parte basis. Hearings may not be required where the application is relatively complete and where there are no parties protesting, or likely to protest, the granting of an application.

Staff Report

10. Field Investigation
11. An inspection of the site for the proposed water system, or in some situations the water system as constructed, should be made. In addition to providing you with a better mental concept of the project, you can verify certain information given in the application.
12. The “Check List of Information....” noted earlier will provide a guide to what you should be investigating in the field. It should be remembered that the Check List is only a guide. The particular application, circumstance, and your judgment will govern. There will be times when certain items on the Check List will be of considerable importance and other when they are of little importance.

Detailed Analysis

13. Now that you have made the field investigation and become fully involved with the project, you are ready to proceed with a more detailed analysis. For the most part, this work will be what you base your Staff Report on. It may be necessary to request additional information from the applicant for this purpose (supplemental information).
14. You will want to check the applicant’s calculations as well as make independent calculations. Information should be verified. You will need to make independent inquiries for information: The Department of Health Services, Department of Water Resources, local planning commissions, local health department, local fire protection agencies, etc.
15. Staff Report
16. Although various formats can be used for your report, it is suggested that you follow that of the application. This allows an easy accommodation to the reader who may want to make cross-reference with the application.
17. It should not be simply a repetition of the application but an analysis of it. It will be necessary to repeat some information to allow the reader, who cannot or does not choose to make reference to the application, a full understanding of the aspect of the application under analysis.
18. You should remember that most of those who read your report know little or nothing concerning certification of water systems. In addition, they are probably not familiar with the technical terminology of your profession. Be expansive in your writing. The more you explain in your report the less you will have to explain through cross-examination in the event of a hearing.

19. Normally Water Division will provide a staff report on any new water or sewer service utility requests for certification. The report shall include²:
- a. Brief history of company
 - b. Current circumstance of company
 - i. Physical condition and improvements needed
 - ii. Service quality
 - iii. Financial condition
 - iv. Rate base – value of plant, advances, contribution, depreciation
 - c. Profile of owner
 - d. Capability of owner
 - i. Financial
 - ii. Operation and maintenance
 - e. Purchase Price (to include discussion of payment over book value)
 - f. Conclusions and Recommendation (to include conditions or requirements for improvement that we would line in the decision)

The Hearing

20. Most certification applications are processed without a hearing. In those proceedings the matter is straightforward and there are not issues or controversy. However, occasionally you will be expected to explain and expand on your project investigation and recommendations in a hearing.
21. General guidelines for hearing conduct are all that need to be stressed here. Be prepared. Know your material. In preparation, anticipate what the questions could be and be able to answer them. By the time you get to a hearing you should have a very good understanding of the issues and controversy. Be professional. Answer the questions in the shortest and most direct manner that you can without withholding information. Don't take the nature of the questions personally. Be detached and objective.

The Decision

22. Before the assigned administrative law judge puts his/her proposed decision on the Commission meeting calendar for approval, a draft copy will be circulated to the different involved staff organizations. When you are asked to review it, your responsibility is to see that it accurately sets forth your participation and position in the matter. Remember the administrative law judge may not agree with you and the decision may go contrary to your recommendations; however, if your work is complete and well presented it is unlikely.

² Letter from Wes Franklin, Chief, Hydraulic Branch, to Mary Carlos, Chief, Administrative Law Judge, April 15, 1985, Subj.: Sales or Transfers of Water Utilities

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY
(FROM PU CODE)

Article 1. Specified Utilities

1001. No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation, water corporation, or sewer system corporation shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without present or future public convenience and necessity require or will require such construction.

This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by public utility or like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business. If any public utility, in constructing or extending its line, plant, or system, interferes or is about to interfere with the operation of the line, plant, or system of any other public utility or of the water system of a public agency, already constructed, the commission, on complaint of the public utility or public agency claiming to be injuriously affected, may after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

1001.5 (a) The commission shall exempt the construction of any line, plant, or system, or extension thereof, located outside the boundaries of the state from the requirements of Section 1001, upon the application of the public utility constructing that line, plant, or system, or extension thereof, if the public utility derives 75 percent or more of its operating revenues from outside the state, as recorded in the fiscal period immediately before the filing of the application, unless the commission determines that the public interest requires that the construction should not be exempt from Section 1001.

(b) Except as provided in subdivision (c), the commission shall make the determination denying the exemption, as specified in subdivision (a), within 90 days after the public utility files the application for exemption with the commission. If the commission fails to make this determination within that 90-day period, the construction of that line, plant, or system, or extension thereof, is exempt from the requirements of Section 1001.

(c) The commission and the public utility filing the application for exemption say, if both agree, extend the time period within which the commission is required to make the determination denying the exemption, for not more than an

additional 6 days after the expiration of the 90-day period specified in subdivision (b), (Added 1983, Ch. 971.)

1002. (a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

- (1) Community values.
- (2) Recreational and park areas.
- (3) Historical and aesthetic values

(4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

(b) With respect to any thermal powerplant or electrical transmission line for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) or the Public Resources Code, no certificate of public convenience and necessity shall be granted pursuant to Section 1001 without such other certificate having been obtained first, and the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the four factors specified in subdivision (a) of this section. (Added by Stats. 1981, Ch. 573.)

1003. Every electrical and gas corporation submitting an application to the commission for a certificate authorizing the new construction of any electric plant, line, or extension, or gas plant, line, or extension, not subject to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, shall include all of the following information in the application in addition to any other required information.

(a) Preliminary engineering and design information on the project. The design information provided for thermal electric plant shall include preliminary data regarding the operating characteristics of the proposed plant, including, but not limited to, the annual capacity factor, availability factor, and the heat rate for each year of the useful life of the plant, line, or extension.

(b) A project implementation plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the plant, line, or extension.

(c) An appropriate cost estimate, including preliminary estimates of the cost of financing, construction, and operation, including fuel, maintenance, and dismantling or inactivation after the useful life of the plant, line, or extension.

(d) A cost analysis comparing the project with any feasible alternative sources of power. The corporation shall demonstrate the financial impact of the plant, line, or extension construction on the corporation's ratepayers, stockholders, and on the cost of the corporation's borrowed capital. The cost analyses shall be performed for the projected useful life of the plant, line, or extension, including dismantling or inactivation after the useful life of the plant, line, or extension.

(e) A design and construction management and cost control plan which indicates the contractual and working responsibilities and interrelationships between the corporation's management and other major parties involved in the project. This plan shall also include a construction progress information system and specific cost controls. (Added Stats. 1982, Ch. 1253.)

1003.5. Every electrical and gas corporation submitting an application to the commission for a certificate authorizing the new construction of an electric plant, line, or extension, or gas plant, line, or extension, which is subject to the provisions of Chapter 6 (commencing with Section 25500) of the Division 15 of the Public Resources Code, shall include in the application the information specified in subdivisions (b), (c), and (e) of Section 1003, in addition to any other required information. The corporation may also include in the application any other information specified in Section 1003. (Added Stats. 1982, Ch. 1253.)

1004. Before any certificate may issue, under the article, a certified copy of its articles of incorporation or charter, if the applicant is a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper county, city and county, city, or other public authority. (Former Sec. 50(c), 1st 2 sents.)

1005. (a) The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated street railroad line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, including provisions for the acquisition by the public of the franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity require; provided, however, upon timely application for a hearing by any person entitled to be heard thereat, the commission, before issuing or refusing to issue the certificate, shall hold a hearing thereon.

(b) When the commission issues a certificate for the new construction of a gas or electric plant, line, or extension, the certificate shall

specify the operating and cost characteristics of the plant, line, or extension, including, but not limited to, the size, capacity, cost, and all other characteristics of the plant, line, or extension which are specified in the information which the gas and electrical corporations are required to submit, pursuant to Section 1003 or 1003.5. (Amended Stats. 1959, Ch. 2109; Stats; 1982, Ch. 1253.)

1005.5 (a) Whenever the commission issues to an electrical or gas corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility. The commission shall determine the maximum cost using an estimate of the anticipated construction cost, taking into consideration the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

(b) After the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate. The commission may authorize an increase in the specified maximum cost if it finds and determines that the cost has in fact increased and that the present or future public convenience and necessity require construction of the project at the increased cost; otherwise, it shall deny the application.

(c) After construction has commenced, the corporation may apply to the commission for authorization to discontinue construction and recover those costs that were reasonably and prudently incurred. After showing to the satisfaction of the commission that the present or future public convenience and necessity no longer require the completion of construction of the project, the commission may authorize discontinuance of construction and the recovery of those construction costs that were reasonable and prudent.

(d) In any decision establishing rates for an electrical or gas corporation reflecting the reasonable and prudent costs of the new construction of any addition to or extension of the corporation's plant, when the commission has found and determined that the addition or extension is used and useful, the commission shall consider whether or not the actual costs of construction are within the maximum cost specified by the commission. (Added Stats. 1985, Ch. 926.)

1006. When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on the complaint or until the future order of the commission. (Part of former Sec. 50(c).)

1006.5 The commission may, after notice and hearing, prior to authorizing any water or sewer system corporation having annual gross operating revenues under two hundred thousand dollars (\$200,000) to construct, operate, acquire, expand, or improve its line, plant, or system, prescribe, as a condition to granting such authority, that the corporation file with the commission a bond with sufficient sureties, subject to approval of the commission, in a reasonable amount not exceeding fifty thousand dollars (\$50,000) payable to the commission and conditioned on the corporation's furnishing adequate and sufficient service within its service area. The commission may, after notice and hearing, declare all or any part of the bond forfeited after finding that the corporation has willfully failed to furnish adequate and sufficient service without just cause or excuse and that such failure has continued for an unreasonable duration. Such bond shall further provide for payment to the commission of the amount of any penalty assessed against the corporation pursuant to Section 2107. The commission may, upon petition by a water or sewer system corporation, for good cause, reduce the amount or eliminate the requirement of any bond that it has required to be filed pursuant to this section. (Added by Stats. 1980, Ch. 1078.)

1007. No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this state, without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required as to terminate between which any such corporation or person is lawfully operating vessels in good faith under this part as it existed prior to August 17, 1923, under tariffs and schedules of such corporations or persons, lawfully on file with the commission. Every applicant for such a certificate shall file in the office of the commission application and evidence in the form required by the commission. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, or issue it for operation between certain points only, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. (Former Sec. 50(d), 1st 2 sents. Amended Stats. 1965, Ch. 1734; amended Stats. 1979, Ch. 578.)

1008. Any municipal corporation or port district operating or maintaining a port may apply to the commission for the issuance of a certificate of convenience and necessity to require any person or corporation operating vessels between points in this State, to serve that port. The commission may, after hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise of the rights granted by any such certificate, upon such terms and conditions as in its judgment the public convenience and necessity require, and upon making the order the person or corporation to which the certificate is issued, shall be compelled to perform the service. (Former Sec. 50(d), 3d sent.)

1009. Any right, privilege, franchise, or permit held, owned or obtained by any person or corporation for the operation of vessels between points in this State may be sold, assigned, leased, transferred, or inherited as other property, only upon authorization by the commission. The commission may at any time for a good cause suspend, and upon notice to the grantee of any certificate or operative right issued or existing under the provisions of Sections 1007 and 1008. (Former Sec. 50(d), 2nd par.)

1010. (a) No express corporation or freight forwarder shall after August 1, 1933, commence operating between points in this State or extend its operations to or from any point or points in this State not theretofore served by it, unless and until it first secures from the commission, upon formal application therefor, a certificate that public convenience and necessity require such operation. The commission may, with or without hearing, issue such certificate, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to its order granting the certificate such terms and conditions as, in its judgment, the public convenience and necessity require. The commission may at any time, for good cause shown and upon notice to the holder of any such certificate, revoke, alter, or amend any such certificate. (Former Sec. 50(f).)

(b) Each application for a certificate of public convenience and necessity made under the provisions of this section shall be accompanied by a fee of five hundred dollars (\$500). (Added 1968, Ch. 1054, operative January 1, 1969.)

(c) A fee of one hundred fifty dollars (\$150) shall be paid to the commission for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber any certificate subject to the provisions of this section. (Added 1968, Ch 1054, operative January 1, 1969.)

1011. The provisions of this article are enacted under the State's reserved power over public utilities or corporations, or both, as the case may be, for the purpose of acting on the right of the grantee of a public utility franchise granted by a city, county, or city and county, or exercise rights thereunder, and not for the purpose of acting on the right of any city or city and county to grant any such franchise. The Legislature hereby declares that the provisions of this article shall remain in full force and effect concurrently with the right of any city or city and county to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. (Former Sec. 50(e).)

FORMAL REQUIREMENTS FOR FILINGS

Rule 2 Form and Size of Tendered Documents

- 1½-line or double spacing allowed
- both sides of page may be used
- don't bind transmittal letter (optional) to document

Rule 3 Caption, Title, and Docket Number

- (a): leave space (1½" X 2½") for docket stamp in upper right
- clearer format requirements for title page
- name, address, phone number, and fax number of person authorized to receive service either on title page or after signature
- (b): separate documents for unrelated subject or different types of relief; problem of different response periods, document tracking.

Rule 4 Signatures

- (b): signature certifies certain acts and representations by the signer; signing should not be taken lightly
- (c): signature of either party or attorney/representative (no longer both) in most cases
- list of authorized signers for party doesn't cover limited liability companies; for LLCs, signature of either officer or manager required (will eventually amend rule to include)
- (d): OK for party or attorney to sign on behalf of others, but parties must be listed in title or 1st paragraph; signature certifies authorization; each party listed is deemed to have filed the documents
- (e): copy of signature page may be filed (unless original specifically required by other rule or statute), but signer must retain the original and produce it at ALJs request until proceeding completely over, all appeals exhausted.
- thus, photocopy of faxed signature page could be submitted for filing **if** "clear and permanently legible" (see Rule 2)

PRACTICE TIP: If an original signature page is submitted, make it easy to identify this original of the document, i.e., “original” stamp, “o” in corner, top of stack, etc.

- (f): lists some of the sanctions that may be imposed for falsity in the certification made by signing the document

Rule 5 Service

- (a): must serve ALJ in addition to all parties on service list
- (b): service by fax, modem, etc. with consent of served party or at direction of ALJ
- (c) service of Notice of Availability allowed if document exceeds 75 pages
 - must file full document with Commission
 - must serve full documents on any party who has previously asked for full service
 - on request of party, must serve full document within one day of party’s request
- (d): attach copy of certificate of service to served document, not necessary to attach service list (but filed original must list all persons served)
- if Notice of Availability used, must attach copy to copies of document filed with Commission.
- not required to be under penalty of perjury, but signature is certificate (Rule 4(e))
- (e): party on service list can change address or person for service on notifying Process Office, copy to all parties
- (f): ALJ can revise service list, will first give notice to all parties on existing list
- (g): ALJ can establish special service list for portion or phase of a proceeding, will first notify all parties on existing list

PRACTICE TIP: ALJ will attempt to give special list a clear and descriptive title, e.g., Phase II service list.” Parties need to make sure that document gets served on appropriate list. If in doubt, serve all parties to the proceeding or ask the ALJ

Rule 6 Verification

- separate verification from signature when verification made by person signing document
- see notes to Rule 4 for treatment of limited liability companies
- note that applications under Article 9 (transfers, mergers, acquisition, etc.) must be verified by all applicants

Rule 7 Copies

- before service list is established, submit original plus seven copies
- after service list is established, submit original plus four copies
- additional copy may be submitted in lieu of the original; party must retain and produce at ALJ's request

PRACTICE TIP: If 8 or 4 copies are submitted (i.e. no original), under Rule 5 the certificate of service attached to one of the copies (the “original”) must include the names and addresses of the persons and entities served. (See also PRACTICE TIP in Rule 4.)

PRACTICE TIP: The options of submitting copies of signatures (Rule 4(e)) and a copy of the documents in lieu of the original may mean that the designation of the original for filing purposes is a matter of convention. These options also permit remote parties to use fax filing agencies to submit documents to the Commission for filing. These private agencies receive faxes of documents, prepare the necessary copies, and deliver the copies to the Commission for filing. The party employing one of these agencies bears the responsibility for any failure of the agency to comply with the Commission's requirements. **Do NOT fax documents directly to the Commission for filing.**

PRACTICE TIP: The reduced number of filed copies is made possible by greater use of the “state service” category on the service list to distribute copies to interested staff members. Be sure to serve all persons on the state service list whenever service of a document is required.

PRACTICE TIP: Although Rule 11 (number of copies of complaints) is unchanged and requires an original plus 12 copies plus 2 additional copies for each defendant, Docket Office will follow an informal practice of accepting an original plus 7 copies plus 2 additional copies for each defendant, Rule 11 will eventually be changed to reflect this practice.

Rule 8 Amendments and Errata

- removes former distinction between amendments to filings and amended filings
- amendment extends time for responsive filings; if responsive filing already made before amendment filed, no need to file another response to the amendment
- procedure stated for optional filing of errata

Rule 8.01 Other Requirements

- be alert to possibility of more specific requirements elsewhere in Rules
- do not file testimony or exhibits (unless specifically required)
- no need for transmittal letter unless it is to be used to acknowledge filing (see Rule 8.12)

FILING AND DOCKET

Rule 8.11 Time, Place and Review of Filing; Docket

- (e): to avoid rejection of document, Docket Office may retire or strike part of document with the party's consent; party must notify other parties of the change
- (f): party may request waiver of requirements in body of document; ALJ will rule; if waived, filed as of date tendered

PRACTICE TIP: Highlight a request for waiver; don't bury it in the middle of the document.

PRACTICE TIP: Although deadlines are "requirements," the better practice is to follow the more specific Rule 48, rather than the request for waiver of Rule 8.11, for requests for extensions.

- (g): minor defects can be cured if done within 7 days; if not minor or curing takes more than 7 days, will be filed as of date defect is corrected
- (h): acceptance for filing doesn't excuse party from complying with rules

Rule 8.12 Acknowledgments

- rule describes procedure if acknowledgment desired

Rule 8.13 Computation of Time

- remember to exclude first day

PRACTICE TIP: Be alert to Commission holidays which are subject to collective bargaining agreements and thus can change annually and can be quirky: Columbus Day, Veterans' Day, day after Thanksgiving, Lincoln's and Washington's Birthday; some holidays not moved to Mondays when rest of the world does, some not observed at all when holiday falls on Saturday.

Rule 8.14 Filing Fees

- if statutory fee changes, statute prevails over Rules

Rule 8.15 Daily Calendar

- also available on the Commission's website at <http://www.cpuc.ca.gov>

REQUIREMENTS FOR CERTAIN PLEADINGS

Rule 44 Definitions

- protest is responsive filing to applications only, petitions for modification now under Rule 47
- response to application now allowed—doesn't object to requested authority, but presents relevant information

Rule 44.1 Time for Filing and Filing Requirements

- time for filing protests and responses remains 30 days, but starts from appearance of application on Daily Calendar

Rule 44.2 Contents of Protest

Rule 44.3 Service of Protest or Response

Rule 44.4 Effect of Filing a Protest

Rule 44.5 Copy of Document on Request

- these rules are substantially the same as current/former rules

Rule 44.6 Replies

- applicant may reply to protests and responses within 10 days of their filing deadline.

PRACTICE TIP: If you as the applicant want a decision quickly, file your reply sooner than the 10th day. If you do not intend to file a reply, notify the ALJ.

Rule 45 Motions

- this rule states the general requirements for motions; specific motions described in the Rules may have different or additional requirements
- (g): moving party may reply to responses within 10 days with permission of ALJ; party must state in first paragraph of reply that permission has been granted

PRACTICE TIP: Do not discuss the substance of your proposed reply or of the responses in making your request to the ALJ; merely state your request to file a reply. Any mention of the substance of the motion, response, reply, or proceeding may constitute an ex parte communication that requires a report or is prohibited (see Rules 1.1-1.7)

- (h): the ALJ may rule on motion at any time; responses or replies are not a matter of right. However, ALJs will be sensitive to due process considerations in making early rulings

PRACTICE TIP: File responses to written motions as soon as possible; don't wait until the 15th day if you want the ALJ to consider your response.

Rule 46 Petitions

- petitions that aren't specifically provided for in the Rules will be treated like written motions

Rule 47 Petitions for Modification

- (a): scope broadened to any requested change to text of decision; no longer limited to minor modifications
- no stay or appellate rights
- (b): must propose specific wording and support factual allegations
- (d): must be filed within one year of effective date of decision; petition filed more than a year later must state reason it couldn't have been filed earlier
- (e): procedure for filing of petition by someone who was not a party to the proceeding
- (f): responses (no longer protests) to petition due within 30 days of service of petition (no longer keyed to publication in Daily Calendar)
- (g): petitioner may reply to responses within 10 days with permission of ALJ; party must state in first paragraph of reply that permission has been granted

PRACTICE TIP: See warnings about ex parte communications under Rule 45.

- (h): note possibility of summary denial
- (j): correct typos with letter to Executive Director, copy to all parties

Rule 48 Extension of Time Limits

- party requesting extension of time limit set in Rules or in ALJ's or Commissioner's ruling must first attempt to get agreement of other parties, must notify other parties if request granted

- be alert to deadlines set by statute; authority of Commission and ALJ to extend statutory deadlines is questionable
- request for extension of time to comply with Commission order still directed to Executive Director, but must be submitted at least 3 business days before existing date for compliance; party must notify other parties if extension granted and state in opening paragraph of complying document (if any)

Rule 49 Prehearing Conference

- At or before first PHC, ALJ may require parties to meet and confer on certain topics, report back with case management statement within 10 days of meeting

Rules

CONTENTS (Rule 15)

All applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought; and, in addition to specific requirements for particular types of applications (see Rules 18 through 41), shall state the following:

(a) The exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.

(b) The name, title, address and telephone number of the person to whom correspondence or communications in regard to the application are to be addressed. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.

(c) Such additional information as may be required by the Commission in a particular proceeding.

(d) Applications for ex parte action shall set forth the basis for such request, and those seeking the granting of relief pending full hearing shall set forth the necessity for such relief.

ARTICLES OF INCORPORATION (Rule 16)

If applicant is a corporation, a copy of its articles of incorporation, certified by the Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies thereof. If current articles have already been filed, the application need only make specific reference to such filings.

FINANCIAL STATEMENT (Rule 17)

Wherever these lists provide that a financial statement shall be annexed to the application, such statement, unless otherwise provided herein, shall be prepared as of the latest available date, and shall show the following information:

(a) Amount and kinds of stock authorized by articles of incorporation and amount outstanding.

(b) Terms of preference of preferred stock, whether cumulative or participating, or on dividends or assets, or otherwise.

(c) Brief description of each security agreement, mortgage and deed of trust upon applicant's property, showing date of execution, debtor and secured party, mortgagor and mortgagee and trustor and beneficiary, amount of indebtedness authorized to be secured thereby, and amount of indebtedness actually secured, together with any sinking fund provisions.

(d) Amount of bonds authorized and issued, giving name of the public utility which issued same, describing each class separately, and giving date of issue, par value,

rate of interest, date of maturity and how secured, together with amount of interest paid thereon during the last fiscal year.

(e) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid thereon during the last fiscal year.

(f) Other indebtedness, giving same by class and describing security, if any, with a brief statement of the devolution or assumption of any portion of such indebtedness upon or by any person or corporation if the original liability has been transferred, together with amount of interest paid thereon during the last fiscal year.

(g) Rate and amount of dividends paid during the five previous fiscal years, and the amount of capital stock on which dividends were paid each year.

(h) A balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.

Application cover letter

(CPUC Letterhead)

February 18, 1998

Dear Applicant:

Subject: Supplement to Application

Applications filed after January 1, 1998, are required to include the following information:

1. Category
2. Need for hearing
3. Issues
4. Schedule

A well-prepared application should contain a clear and concise summary of the issues that the Commission is being asked to resolve. If your application already contains a summary of the issues to be considered by the Commission, simply indicate on the form the section or page of your application where the issues are summarized. If your application does not contain this information, please summarize the issues on the attached form or on a separate page.

Attachments

Scoping Memo Information for Applications

A. Category¹

(Check the category that is most appropriate)

Adjudicatory – “Adjudicatory” proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

Ratesetting – “Ratesetting” proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or established a mechanism that in turn sets the rates for a specifically named utility (or utilities). “Ratesetting” proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future.

Quasi-legislative – “Quasi-legislative” proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class or entities within the industry.

B. Are hearings necessary?

Yes

No

If yes, identify the material disputed factual issues on which hearings should be held, and the general nature of the evidence to be introduced.

¹¹ See Public Utilities Commission Rules of Practice and Procedure, Article 2.5, especially Rules 5 and 61, which appear on the Commission’s internet page (www.cpuc.ca.gov) under the heading “CPUC General Information, Rules of Practice and Procedure.”

Are public witness hearings necessary?
Yes No

Public witness hearings are set up for the purpose for getting input from the general public and any entity that will not be a party to the proceeding. Such input usually involves presenting written or oral statements to the presiding officer, not sworn testimony. Public witness statements are not subject to cross-examination.

C. Issues

List here the specific issues that need to be addressed in the proceeding.

D. Schedule

(Even if you checked “No” in B above)
Should the Commission decide to hold hearings, indicate here the proposed schedule for completing the proceeding within 12 months (if categorized as adjudicatory) or 18 months (if categorized as ratesetting or quasi-legislative).

<hr/>	Prehearing conference
<hr/>	Hearings
<hr/>	Briefs due
<hr/>	Submission
<hr/>	Proposed decision (90 days after submission)
<hr/>	Final decision (60 days after proposed decision is mailed)

Application for a CPCN

Outline Guide for a Water Certificate Application

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of (one or)
more individuals dba or partnership dba)
or a California corporation) for a)
Certificate of Public Convenience and)
Necessity to Construct a Public Utility)
Water System near (town) in (county))
and to Establish Rates for Service and)
(if corporation) to Issue Stock)

Application No.

(PUC will Insert)

APPLICATION

The application of (exact legal name of each applicant) respectfully shows:

I

(If Individuals)

Business and residence address and telephone numbers.

(dba) utility name.

(If Corporation)

Names and addresses of principal stockholders.

State that a copy of articles of incorporation certified by Secretary of State is attached to original of application.

Name, address, and telephone number of person to whom communications regarding this application should be addressed.

II

Indicate that financial statements of the net worth of individual applicants or principal stockholders are attached as exhibits.

Explain relationship between and among subdivision land owner, developer of the subdivision, and the utility.

Show names and addresses of any other privately or publicly owned water systems within 1 mile and at least the two systems nearest to the requested area. Certify

that a copy of the application has been furnished to all parties names, to the Local Agency Formation Commission and to the county board of supervisors.

III

State that under Section 1001 of the Public Utilities Code a certificate of public convenience and necessity to construct a water system or a noncontiguous extension is requested to serve:

Identification of subdivision (name, tract number).

Geographic location (Township, Range, portion of section).

Location reference to other landmarked locations such as towns, highways, railroads, lakes, rivers, parks, airports, military bases, resort areas, etc.

Attach a location map as an exhibit which shows the location of the proposed construction and its relationship to potential competing entities and the other pertinent data. (U.S. Department of the Interior, Geological Survey quadrangle maps to the scale of 1:24,000 (1-inch equals 2,000 ft.) or a portion of county maps are suitable for location.)

IV

Describe the subdivision in which water system facilities are to be constructed showing:

Total acreage within the boundaries to be served and number of lots.

Square feet area of the smallest and largest lots, average of all lots.

Elevations above sea level of the lowest point and highest point of land.

General description of the terrain.

Character of the subdivision, urban residential, resort, etc.

Lots to be sold or leased, with or without homes.

Availability of centralized sewer system, electrical, telephone, natural gas service.

Subdivision map has or has not been approved by the county.

Attach as an exhibit a final or tentative subdivision map.

Attach a copy of the environmental assessment that has been prepared concerning the subdivision.

V

Briefly describe the proposed water system, how it is to operate and pressures to be obtained at customer services.

State that a map is attached as an exhibit which shows, with legend and symbols, all water system facilities to be installed. (The subdivision map in IV above may be used for this purpose and if there are to be production, transmission and storage facilities outside of the subdivision a separate map to the same scale may be used to delineate these.) The maps should show some light contour lines referenced from sea level to indicate appropriate elevations. The maps should also show land to be used as utility property and easements.

Describe in detail the sources of water supply and give whatever history is available which will support claimed production capacities. If wells are sources of supply attach, as exhibits, well driller's reports and results of a 72-hour pumping test.

If the sources of supply have been developed, attach as an exhibit the test results of bacteriological and chemical analyses of the water supply.

Attach as an exhibit all computations of water requirement and supply including standby or emergency sources of water supply. The attached Water Supply Supplemental Questionnaire should be completed and submitted with the application.

Include a statement that the water system conforms with the Commission's General Order No. 103, Rules Governing Water Service Including Minimum Standards for Design and Construction.

VI

Provide a list of the principal quantities of utility plant materials by type and size to be used in constructing the water system such as pipes, tanks, services, and fire hydrants, with estimated installed unit costs.

Show the estimated cost of the proposed system, including all engineering and legal fees, in accordance with classification of utility plant accounts prescribed in the Commission's Uniform System of Accounts for Water Utilities (Class D) using the estimated status of the system at the end of the first year of operation and the end of the fifth year of operations. (See following tabulation.)

Estimated Total Utility Plant

:	:	:	<u>As of End of Year</u>		:
:	:	:	First Full	:	:
:	Ac.	:	Year of	:	Fifth
:	No.	:	Operation	:	Year
		Account			

301 Intangible Plant
 306 Land, Rights-of-Way, Easements
 Subtotal, Nondepreciable
 315 Wells
 317 Other Source of Supply Plant
 324 Pumping Equipment
 332 Water Treatment Equipment
 342 Reservoirs and Tanks
 343 Water Mains
 345 Services
 346 Meters
 347 Meter Installations
 348 Hydrants
 371 Structures
 372 Office Furniture and Equipment
 373 Transportation Equipment
 374 Other Equipment
 Totals
 250 Less: Reserve for Depreciation
 Net Utility Plant

Amount of legal fees included above?

Amount of engineering fees included above?

Is land valued at cost or market?

Have any depreciable facilities been in use for one year or more prior to application?

Amount of reserve for depreciation on facilities in use for one year or more prior to application?

VII

Show requirements of other governmental agencies and how requirements may have been met, as may be appropriate such as:

- a. Water supply permit:
 - 1) To be issued by State Department of Health Services for water systems to serve more than 200 customers, or
 - 2) To be issued by the County Health Services for water systems to serve less than 200 customers.
- b. County franchise if county has such requirement. Application should state that authority is requested to exercise a franchise which has been received or applied for.
- c. County or local fire protection district requirements for fire flow and for fire hydrants.
- d. Land use permit to obtain water from U.S. National Forest Service land.
- e. Water appropriation permit from the State Water Rights Board.
- f. Plans for a dam approved by State Department of Water Resources.
- g. Environmental impact assessments required by California Environmental Quality Act.

Identify and summarize any contracts, if any, executed or proposed, with government agencies or private parties to be involved in the continued operation of the proposed water system.

VIII

Show the rates requested;

Metered rates:

Minimum or service charge type

Monthly or annual basis

Flat rates

Size of service connection and/or customers' premises

Monthly or annual

Fire Hydrant rates

(Note: The Commission's Water Division has an available supply of tariff forms useful in designing rate schedules.)

IX

Provide the estimated operating results which includes an estimate of the number of customers, revenues, expenses, depreciation and taxes in accordance with classification in CPUC's Uniform System of Accounts for the first, fifth, and tenth year of operation. (See following tabulation.)

Estimated Operating Results

:	:	:	<u>As of End of Year</u>			:
:	:	:	First Full	:	:	:
:	Ac.	:	Year of	:	Fifth	:
:	No.	:	Operation	:	Year	:
		Account				

Number of Customers (End of Year)

Revenues:

601 Metered Water Revenue
602 Unmetered Water Revenue
605 Fire Protection Revenue
Total Revenues

Expenses:

703 Source of Water Supply Expenses-Miscellaneous
704 Purchased Water
726 Power and Fuel for Pumps
734 Operation and Maintenance – Labor
735 Operation and Maintenance – Materials
736 Operation and Maintenance – Contract Work
792 Office and Management Salaries
792 Office Supplies and Expense
793 Insurance Expense
798 Accounting, Legal and Other Services
799 General Expense
801 Vehicle Expense
Subtotal Operating Expenses
503 Depreciation Expense*
507 Taxes
Total Expenses, Depreciation and Taxes

Net Revenues

Ratio of Net Revenues to Net Utility Plant
(Approx. % return)

* Use 3% composite rate if you have no other more reasonable rate.

X

Describe plans for the operation of the utility. Show the qualifications of management and operating personnel, availability of operating personnel to customers, how billing is to be handled and provisions for handling customers' inquiries and complaints.

List nearby systems and explain why those systems cannot or will not provide service in the area¹.

State how the water system is to be financed. (If applicant is a corporation it must request PUC authority to issue it stock and substantiate the proposed expenditure of all stock proceeds.) Show how you plan to assure the financial integrity of the public utility during this development periods².

State if land developer is willing to pay applicant from \$100 to \$300 through the escrow agent each time a lot is sold to cover the operating losses during a development period of 5 to 15 years.

¹ Resolution No. M-4708, August 28, 1979 states that the Commission will "deny certificates for a potentially viable system if another entity, such as a public utility or public district, is able to serve the proposed area"

² Resolution No. M-4708 states that the Commission will "deny certificates for operations which are likely to be unviable or marginally viable or provide inadequate service, whether or not an existing entity can provide service to the subject area"

XI

WHEREFORE, applicant requests an order (here state clearly and concisely the specific authorization sought).

Dated at _____, California, this _____ day of _____, 20____.

(Signature of each applicant)

(Signature, address and telephone number of attorney, if any)

Verification

I am the applicant (an officer of the applicant corporation herein, and am authorized to make this verification on its behalf) in the above entitled matter; the statements in the foregoing document are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California.
(date) (name of city)

(Signature of California or
Signature and Title of
Corporate Officer)